1934 *Present :* **Dalton and Drieberg JJ.**

SAFENAUMMA *v.* SIDDICK *et al.*

373—D. C. Kandy, 43,138.

Negligence—Action to recover damages for injuries—Boy knocked down by motor bus—Evidence of negligence—Absence of explanation.

Where, in an action to recover damages for injuries caused by a motor bus, it was proved that the bus, which was driven along the road at a fast speed, suddenly left the road and knocked down a boy standing on the doorstep of a house,—

Held, that the facts proved constituted, in the absence of an explanation, *prima facie* evidence of negligence.

APPEAL from a judgment of the District Judge of Kandy.

C. V. Ranawake (with him *H. N. G. Fernando*), for plaintiff, appellant.

M. Mahroof, for second defendant, respondent.

Cur. adv. vult.

November 26, 1934. DALTON J.—

This action was brought by the plaintiff to recover from the defendants the sum of Rs. 700, said to have been incurred by her as the mother of a boy named Mohamed Sameen, nine years of age, for medical expenses, nursing, extra food, and nourishment in attempting to cure her son, who was knocked down and injured by a motor bus driven by the first defendant and owned by the second defendant. It was admitted that the boy was injured on September 28, 1932, at the doorstep of a house

at Madawala by the bus in question, driven at the time by the first defendant and registered at the time in the name of the second defendant. The boy died in October.

The first defendant filed no answer. The second defendant denied that he was the owner of the bus at the time, or that it was negligently or unskilfully driven. The injury complained of, it was pleaded, was due to a pure accident.

The trial Judge has found that the second defendant was the owner of the bus at the time the boy was injured, but has held that the plaintiff has not established any negligence on the part of the defendant. He holds that the plaintiff should have called evidence to show why the bus ran off the road. He adds that it is fair to assume that, as the injuries to the boy were serious and as he died as a result of them during the ensuing month, the Police were of opinion that there had not been any negligent, careless, or unskilful driving, otherwise they wuld be obliged to enter a prosecution. The trial Judge is apparently therefore under the mistaken impression that if there be no negligence to justify a criminal prosecution, a person injured cannot bring a civil action to recover losses incurred based on any alleged negligent act.

The facts admitted or proved by the plaintiff show that the boy was standing on a step of the house, two feet high (see plan P 2), some 27 feet from the middle of the road. There is no evidence to show how far the step was from the edge of the road. There is evidence to show the bus was coming along the road at a fast rate of speed, when it suddenly left the road and seems to have charged the house, hitting the steps and knocking the boy down. Here is clearly *prima facie* evidence of negligence on the part of the driver and owner. It is not suggested, and I have yet to learn, that in Ceylon one may usually or naturally expect a bus to leave the road at any moment and charge the steps of a house, as was done here.

In Ellor v. Selfridge & Co. Ltd.[1] it was held that where a motor van got on to the pavement and injured persons standing there, these facts, in the absence of explanation, constitute evidence of negligence. Scrutton L.J. applied the following words of Erle C.J. from *Scott v. London & St. Katherine Docks Company*[2]:—

> "There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants that the accident arose from want of care."

Romer L.J. remarked that if a man use a footpath he risked a collision with another person using the footpath or possibly a perambulator, but not a motor van, which had no right to make use of it. It was essential for the defendants to show how their van got there, and they had called no evidence.

[1] *46 Times L. R. 236.*

[2] *3 H. & C. 596.*

The plaintiff has led sufficient evidence of negligence to throw the onus on the defendants to show that they were not guilty of any want of care. The first defendant has not appeared. One witness states he has run away.

The second defendant calls a witness, who states that the bus was being driven slowly and that there is a curve on the road at the place in question. He states that the bus went straight on and ran into a house, knocking the child down, because "the steering gear" broke. That is all. A statement of that kind of course in no way discharges the onus of the defendants or show there was no want of care on their part. Even assuming that the steering gear was worn and defective but that the defendants had no knowledge of the defect, to place the bus on the road in that condition was a thing necessarily dangerous to users of the road and others, and it amounts to negligence (*Hutchins v. Maunder* [1]). The plaintiff having led evidence of negligence which has not been met in any way, she is entitled to succeed in her action.

The question of the amount to which she is entitled remains to be decided. Without coming to any finding as to the amount, the trial Judge expresses the opinion that her claim has been conceived on an exaggerated basis. Having regard to the serious injuries caused to the boy and the evidence as to the expenses incurred by her, I would award her the sum of Rs. 350 with costs both here and below. The appeal is allowed and the decree entered is set aside. A decree will now be entered as indicated above against both defendants.

DRIEBERG J.—I agree.

Appeal allowed.